SAMSURI HJ. DULLAH

v.

SANDAKAN MUNICIPAL COUNCIL

HIGH COURT BORNEO, SANDAKAN
ABU MANSOR ALI J
[ORIGINATING MOTION NO. 7 OF 1987]
1 DECEMBER 1987

ADMINISTRATIVE LAW: *Certiorari - To quash an order made by Sandakan Municipal Council - Directing the demolition of applicant's house - Breach of natural justice - Right of applicant to be heard.*

The applicant, a native of Sabah, built a house on a piece of land belonging to the State Government of Sabah. The applicant admitted that he built the house without the permission of the respondent but since the owner did not object he was unaware that permission was needed. For the past 12 years the respondent never indicated either expressly or impliedly that the applicant had contravened any law in particular By-law 2(1) of the Sandakan Municipal Council By-laws (Building) 1951. On 6 July 1987 the applicant was served with an order dated 25 June 1987 to demolish his house within seven days failing which the respondent would demolish his house without further notice.

Held:

[1] It is now quite settled that in a case such as the instant case the applicant is entitled to be heard before the demolition order of 25 June 1987 was made.

[2] By the failure of the respondent to do so the respondent has therefore breached the rules of natural justice.

[3] There is nothing in the Sandakan Municipal Council By-laws that right to be heard is expressly excluded. It is also settled law that right to be heard exists even when the statute is silent.

[Order of Council quashed. Costs to applicant.]

Cases referred to:

Ridge v. Baldwin [1964] AC 40
J.P. Bethelsen v. Director-General of Immigration Malaysia & Ors. [1986] CLJ (Rep) 160
Letchumi Ammal v. Nam Fong Housing Sdn. Bhd. [1982] 2 MLJ 19
Cooper v. Wandsworth Board of Works [1863] 14 CBNS 180
Chief Building Surveyor v. Makhanlall & Co. Ltd. [1969] 2 MLJ 118

Legislation referred to:

Rules of the High Court 1980, O. 53 r. 1(2)
Sandakan Municipal Council By-laws (Building) 1951, By-law 2(1)

For the applicant - Sugumar Balakrishnan; M/s. Sugumar & Co.
For the respondent - Raymond Tan; M/s. Chin Lau Wong & Foo Co.

JUDGMENT

Abu Mansor Ali J:

Pursuant to leave granted on 29 July 1987 the applicant applied by notice of motion dated 29 July 1987 for an order of *certiorari* to quash an order made by the abovenamed respondents on 25 June 1987, directing the demolition of the applicant's house at Kampong BDC, Mile 1½, Jalan Utara, Sandakan. After hearing argument I reserved judgment to a date to be fixed.

The grounds on which the applicant relies are as set out in the statement filed as required under O. 53, r. 1(2) of the Rules of the High Court. The facts of the case can be gathered from the affidavit filed in support of the application for leave.

Applicant, a local and a native of Sabah, is a fisherman married with two children of 4 to 6 years old. He alleged in 1974, the year it was built was disputed by the respondent, he built a house of temporary structure on a piece of land belonging to the State Government of Sabah. He admitted he built that house without the written permission of the respondent as he was not aware that he needed to and, he says, since the owner of the land did not object the applicant believed he had not contravened any law. He also alleged that for the past 12 years the respondent never indicated either expressly or impliedly that he had contravened any law in particular By-law 2(1) of the Sandakan Municipal Council By-laws (Building) 1951.

On 6 July 1987 the applicant was served by the respondent with an order dated 25 June 1987 directing the applicant to demolish his house within seven days of the service of that order failing which the respondents themselves would demolish his house without further notice and the cost of the demolition is to be borne by the applicant.

The applicant states he would be deprived of his house without being given an opportunity of being heard if that order is carried out. Hence, this application to Court to quash the impugned order.

Mr. Sugumar, for the applicant, contended that the order of the respondent dated 25 June 1987 directing the demolition of the applicant's house is invalid and should be quashed. He advanced four grounds upon which relief is sought but I am of the view the grounds can be combined into only one that is the decision sought to be quashed was contrary to the rules of natural justice by reason of the failure of the respondent to give the applicant the opportunity to be heard. Counsel cited several authorities on the point which include *Ridge v. Baldwin* [1964] AC 40 and *J.P. Bethelsen v. Director-General of Immigration Malaysia & Ors.* [1986] CLJ (Rep) 160 where the principle of the right to be heard in *Ridge v. Baldwin* (*supra*) was applied. Mr. Raymond Tan for the respondent, however, contended that the applicant being squatters and trespassers of State land and a person who had built in contravention of the Sandakan Municipal By-law in erecting the said house without their permission need not be heard. He cited *J.P. Bethelsen* (*supra*) and *Letchumi Ammal v. Nam Fong Housing Sdn. Bhd.* [1982] 2 MLJ 19.

On the authorities cited before me I am of the opinion it is now quite settled that in a case such as the instant case the applicant is entitled to be heard before the demolition order of 25 June 1987 was made. In *J.P. Bethelsen v. Director-General of Immigration, Malaysia* [1986] CLJ (Rep) 160, the Supreme Court approved *Schmidt & Anor. v. Secretary of State for Home Affairs* in which Lord Denning points out:

> The speeches in *Ridge v. Baldwin* [1964] AC 40 show that an administrative body may, in a proper case, be bound to give a person who is affected by their decision an opportunity of making representations. It all depends on whether he has some right or interest, or, I would add, some legitimate expectation, of which it would not be fair to deprive him without hearing what he has to say.

By the failure of the respondent to do so the respondent has therefore breached the rules of natural justice. There is nothing in the Sandakan Municipal By-law that right to be heard is expressly excluded. It is also settled law that the right to be heard exists even when the statute is silent. I find Mr. Tan's argument would be somewhere if the respondent was the owner of the land instead of being the local authority.

I find the situation in this present application is somewhat similar to the case of *Cooper v. Wandsworth Board of Works* [1863] 14 CBNS 180 wherein a house was erected without the permission of the local council. The Board of the local authority ordered it to be demolished. It was subsequently so demolished. The owner of the house sued the council for damages. In *Administrative Law of Malaysia and Singapore* by Prof. M.P. Jain at pp. 178-179 the author wrote:

> The power of demolition carried with it enormous consequences as a house of any value could be demolished ... Byles J ruled that the Board was acting judicially... and therefore hearing the plaintiff was essential. Accordingly damages were awarded to the plaintiff for injury done to his building as the Board had no power to act without giving a hearing.

Similarly in *Chief Building Surveyor v. Makhanlall & Co. Ltd.* [1969] 2 MLJ 118 it was held:

> (2) there was a breach of the rules of natural justice on the part of Magistrate's Court in that it did not give a hearing to the owner of the building before making an order under s. 63(4) of the Ordinance. As this order empowered the Chief Building Surveyor to demolish the building, the demolition if carried out would have deprived the owner of his property without his having been heard and this is contrary to the principle repeatedly recognised, and reaffirmed recently by the Judicial Committee in *Durayappah's* case (3), that no man is to be deprived of his property without his having an opportunity of being heard, unless of course there are express words in the statute authorising deprivation without notice;

For reasons given I apply the principle in *J.P. Bethelsen* (*supra*) and the case of *Chief Building Surveyor v. Makhanlall & Co. Ltd* (*supra*) and I have no hesitation in declaring that the impugned order of the council dated 25 June 1987 is invalid as it infringed the settled law of natural justice. I order that it be quashed. Lest that my order may be wrongly interpreted, by this order it does not mean that the respondent cannot act or take appropriate action against the applicant all over again for it has the power to do so but if it wishes to

do so then it must do so with one important condition, that it may only do so only after observing all due process, for that is what differentiates an *intra* or *ultra vires* order. I order in terms of the application with costs to applicant.

Also found at [1988] 1 CLJ 581